

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

PAUL HOAG
(CRD No. 2217083),

Respondent.

Disciplinary Proceeding
No. E8A2004101701

Hearing Officer – DRP

DEFAULT DECISION

April 5, 2006

Respondent is barred from associating with any member firm in any capacity for failing to respond to requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. In light of the bar, no additional sanctions are imposed for engaging in outside business activities without prompt written notice to his member firm, in violation of NASD Conduct Rules 3030 and 2110.

Appearances

Kevin G. Kulling, Regional Counsel, Chicago, IL (Rory C. Flynn, Washington, DC, and Roger D. Hogoboom, Denver, CO, Of Counsel) for the Department of Enforcement.

No appearance by or for Paul Hoag.

DECISION

I. Procedural History

On September 12, 2005, the Department of Enforcement filed a two-count Complaint against Respondent Paul Hoag (Hoag or Respondent), attached to this Decision as Exhibit A. The Complaint alleges that Respondent engaged in outside business activities without giving his employer prompt written notice, in violation of NASD Conduct Rules 3030 and 2110, and failed to respond to requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. Respondent did not file an Answer to the Complaint.

Accordingly, on November 30, 2005, Enforcement filed a motion for entry of default decision, supported by the declaration of Kevin G. Kulling and six exhibits. Hoag did not file a response to the motion. For the reasons set forth below, Enforcement's motion is granted.¹

II. Respondent's Default

On September 9, 2005, Enforcement served the Complaint and Notice of Complaint on Respondent by certified and first class mail, sent to Respondent's last known residential address, as reflected in the Central Registration Depository (the CRD address). The certified mailing was returned, marked "Unclaimed." Respondent did not file an Answer.

On October 11, 2005, Enforcement served the Complaint and Second Notice of Complaint on Respondent at the CRD address by certified and first class mail. The certified mailing receipt was returned bearing the signature "Charlie Hoag." Respondent did not file an Answer.

Enforcement complied with Procedural Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby providing constructive notice of this proceeding. By failing to file an Answer or otherwise respond to the Complaint, Respondent defaulted. Pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

III. Jurisdiction

Respondent was registered as an investment company/variable contracts representative with NASD member firm Berthel, Fisher & Company (Berthel) from June 2003 until the firm terminated his registration in November 2004. Since that time, he has not been associated or registered with any NASD member.

¹ The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declaration and exhibits filed by Enforcement with its motion.

Respondent is subject to NASD jurisdiction pursuant to Art. V, Section 4 of NASD's By-Laws, because the Complaint, which was filed within two years of the termination of his employment at Berthel, alleges misconduct that occurred while he was an associated person and failure to comply with requests for information made during the two-year period following the termination.

IV. Findings of Fact and Conclusions of Law

A. Outside Business Activities

On July 29, 2004, Respondent signed a sales agreement with Berthel that prohibited representatives from engaging in, or receiving compensation for, any outside activity without prior approval from the firm. Representatives were required to complete or update an "outside business activities" form to reflect any such activities. The agreement specifically identified "accepting a position as an officer, director or employee" of any company as an outside business activity. On July 29, Respondent completed an outside business activities form, disclosing his ownership of rental properties and a farm.

On August 2, 2004, Respondent was elected president of Leisure Direct, Inc. (LDI), a publicly traded direct marketing firm that primarily sells pools, spas and backyard recreational products. Upon taking office in or about October 2004, Respondent was slated to draw a salary of \$15,000 for the balance of 2004, \$48,000 in 2005, and \$60,000 in 2006, with one-half of his annual salary to be paid in stock. His compensation also included various bonuses, and he had a three-year option to purchase \$500,000 of LDI's common stock at \$.50 per share.

Respondent failed to disclose this outside business activity to Berthel or to update the outside business activity disclosure form and admitted as much when questioned by his firm.²

² Berthel discovered Respondent's outside business activity when NASD's Market Regulation Department contacted the firm regarding Hoag's trading in LDI.

NASD Conduct Rule 3030 prohibits any person associated with a member firm from being “employed by, or accept[ing] compensation from, any other person as a result of any business activity, other than a passive investment, outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member. Such notice shall be in the form required by the member.” The rule was “intended to improve the supervision of registered personnel by providing information to member firms concerning outside business activities of their representatives.”³

By failing to notify his firm that he was employed by, and receiving compensation from, LDI, Respondent violated Conduct Rules 3030 and 2110,⁴ as charged in the first cause of the Complaint.

B. Failure to Respond to Requests for Information

The second cause of the Complaint alleges that on or about November 30, 2004, NASD staff sent a letter to Respondent by first class and certified mail to his CRD address, pursuant to NASD Procedural Rule 8210, requesting that he provide certain documents and information. The certified mailing receipt was returned bearing the signature “Patsy Hoag.” Hoag did not respond in any manner to the request.

The Complaint further alleges that on December 20, 2004, the staff sent a second Rule 8210 request for information and documents by first class and certified mail to Respondent at his CRD address. Again, the certified mailing receipt was returned bearing the signature “Patsy Hoag.” Again, Respondent did not respond in any manner to the request.

³ NASD Notice to Members 88-86 (Dec. 1988).

⁴ A violation of an NASD rule constitutes a violation of Conduct Rule 2110. *See Stephen J. Gluckman*, Exchange Act Release No. 41,628, 1999 SEC LEXIS 1395, at *22 (July 20, 1999).

Procedural Rule 8210 provides that NASD “staff shall have the right to require a member . . . to provide information . . . and to testify . . . with respect to any matter involved in [an] investigation” Rule 8210 further states that “no . . . person shall fail to provide information . . . pursuant to this Rule.” In the absence of subpoena power, NASD must rely on Rule 8210 to obtain information from members in the course of its investigations. Accordingly, members and associated persons have a duty to cooperate fully and promptly with NASD requests for information.⁵

The staff served the requests in accordance with Rule 8210(d), and pursuant to that rule, Respondent is deemed to have received them. Thus, the allegations in the second cause of the Complaint, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent failed to respond to the staff’s requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

V. Sanctions

NASD *Sanction Guidelines* provide that a bar is standard for failure to respond to requests for information.⁶ There are no mitigating circumstances here that would warrant any sanction less than a bar. Accordingly, Respondent will be barred in all capacities for this violation.

In light of the bar, additional sanctions for engaging in outside business activities without prompt written notice to his member firm, as charged in the first cause of the Complaint, would be redundant.⁷ Accordingly, no separate sanctions will be imposed for that violation.

⁵ *Brian L. Gibbons*, Exchange Act Release No. 37,170, 1996 SEC LEXIS 1291, at *7 (May 8, 1996), *aff’d*, 112 F.3d 516 (9th Cir. 1997).

⁶ *NASD Sanction Guidelines* at 35 (2005 ed.).

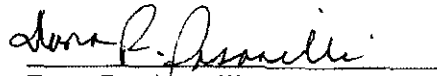
⁷ *See Dep’t of Enforcement v. Hodde*, 2002 NASD Discip. LEXIS 4, at *17 (NAC Mar. 27, 2002).

VI. Conclusion

Respondent Paul Hoag is barred from association with any member firm in any capacity for failure to respond to requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. In light of the bar, no separate sanctions are imposed for engaging in outside business activities without providing prompt written notice to his member firm, in violation of NASD Conduct Rules 3030 and 2110.

The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.

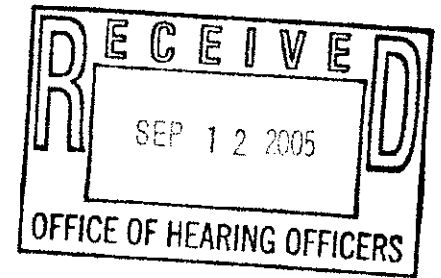

Dana R. Pisanelli
Hearing Officer

Dated: April 5, 2006
Washington, DC

Copies to: Paul Hoag (*via overnight and first class mail*)
Kevin G. Kulling, Esq. (*via electronic and first class mail*)
Roger D. Hogoboom, Esq. (*via electronic and first class mail*)
Rory C. Flynn, Esq. (*via electronic and first class mail*)

EXHIBIT A

**NASD
OFFICE OF HEARING OFFICERS**



DEPARTMENT OF ENFORCMENT,

Complainant

v.

PAUL HOAG,
Registered Representative
CRD No. 2217083,

Respondent

Disciplinary Proceeding
No. E8A2004101701

Hearing Officer

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Between June 2003 and November 2004, Paul Hoag ("Respondent Hoag") was registered as an Investment Company and Variable Contracts Representative of Berthel, Fisher & Company ("Member"), a member of NASD. Pursuant to Article V, Section 4 of the NASD's By-Laws, Respondent Hoag is subject to the jurisdiction of NASD.

**FIRST CAUSE OF COMPLAINT
Outside Business Activities
Violations of NASD Conduct Rules 2110 and 3030**

2. In or about October 2004, Respondent Hoag became President of Leisure Direct, Inc. (LDI), a small public direct marketing firm of pools, spa and backyard recreation products. According to the firm's quarterly financial statements, Respondent Hoag was designated a salary of \$15,000, \$48,000 and \$60,000 for 2004, 2005 and 2006, respectively, one half of which was payable in stock. Respondent Hoag was also granted an option for three years to purchase \$500,000 of LDI's common stock at \$.50 per share.

3. In connection therewith, Respondent Hoag failed and neglected to give prompt written notice of his engagement in such activities to the Member.

4. The acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rules 2110 and 3030 by Respondent Hoag.

SECOND CAUSE FOR COMPLAINT
Failure to Respond
NASD Conduct Rule 2110 and NASD Procedural Rule 8210

5. On or about November 30, 2004, NASD sent to Respondent Hoag a request that he provide certain documents and information, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. The request for information was sent by first class and certified mail, return receipt requested, to Respondent Hoag's address of record as contained in the records of the Central Registration Depository ("CRD address"). The first class mailing was not returned to NASD staff. The certified mailing receipt was returned to NASD staff signed by "Patsy Hoag."

6. On or about December 20, 2004, NASD sent to Respondent Hoag a final request that he provide certain documents and information, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. The request for information was sent by first class and certified mail, return receipt requested, to Respondent Hoag's CRD address. The first class mailing was not returned to NASD staff. The certified mailing receipt was returned to NASD staff signed by "Patsy Hoag."

7. To date, Respondent Hoag has failed to respond to either of NASD staff's requests specified in Paragraphs 5 and 6.

8. The acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rule 2110 and Procedural Rule 8210 by Respondent Hoag.

PRAYER FOR RELIEF

WHEREFORE, the Complainant respectfully requests the issuance of:

- A. Findings of fact and conclusions of law that Respondent Hoag committed the violations charged and alleged herein;
- B. An order imposing sanctions upon Respondent Hoag in accordance with NASD Rule 8310;
- C. An order imposing such costs of any proceeding against Respondent Hoag as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- D. An order imposing any other fitting sanction.

**NASD DEPARTMENT OF
ENFORCEMENT**

Date: Sept. 9, 2005

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